

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Carbon
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Plaintiff's Office, P.O. Box 44, 841st Street, Lehigh, PA 18235
610-377-7730

DEFENDANTS

Plaintiff, Neuman & Gullace, LLP and Midland Funding, LLC

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Violation of 15 U.S.C. Section 1692 Fair Debt Collection Practices Act
 Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

2/21/2013

/s/ Jason M. Rapa, Esquire

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
COURT FILE NO.:**

| | |
|--|--|
| SERGIO CIERI, Plaintiff v. FULTON FRIEDMAN & GULLACE, LLP and MIDLAND FUNDING, LLC Defendants | <u>COMPLAINT</u> <u>JURY TRIAL DEMANDED</u> |
|--|--|

INTRODUCTION

1. The United States Congress has found there is abundant evidence of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress drafted the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (hereinafter “FDCPA”), with the goal to eliminate abusive collection practices utilized by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not

competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).
3. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA).
4. Because Defendants do business within the State of Pennsylvania, personal jurisdiction is established.
5. Venue is proper in this District because the acts and transactions occurred here, and Defendants transact business here in Pennsylvania.

PARTIES

6. Plaintiff, Sergio Cieru, is a natural person who resides in Lehighton, County of Carbon, State of Pennsylvania, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
7. Defendant, Fulton Freidman & Gullace, LLP. (hereinafter referred to as "Defendant" or "FFG") is a law firm engaged in the business of collecting debts alleged to be owed to another, and has a primary office located at 130B Gettysburg Pike, Mechanicsburg, Pennsylvania 17055.

8. At all times relevant to this Complaint, Defendant, FFG, transacted business in the Middle District of Pennsylvania and at other locations throughout the Commonwealth, operating as a collection agency and as a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).
9. Defendant, Midland Funding, LLC (hereinafter referred to as “Defendant” or “Midland”) is upon information or belief a limited liability company with its principal office located 8875 Aero Drive, Suite 200, San Diego, California 92123.
10. At all times relevant to this Complaint, Defendant, Midland, transacted business in the Middle District of Pennsylvania and at other locations throughout the Commonwealth, operating as a collection agency and as a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

11. Plaintiff, Cieri allegedly incurred a financial obligation that was primarily for personal, family or household purposes, and is therefore a “debt,” as that term is defined by 15 U.S.C § 1692a(5), namely a personal loan through Chase Bank USA.

12. Plaintiff lost his wife, reducing his household income causing him to be unable to make his monthly payments and become delinquent on the alleged debt.
13. On or around August 17, 2012, Defendants FFG, on behalf of its client Midland, filed a Civil Complaint against Cieri.
14. Defendants' civil complaint was filed in Magisterial District 56-3-01 before the Honorable Edward M. Lewis. A true and correct copy the Magisterial District Court complaint is attached as Exhibit "A."
15. The civil complaint listed Cieri as the defendant and listed is address as 90 Fairyland Road, Lehighton, Pennsylvania, making the proper venue for any claims against Cieri, Magisterial District 56-3-02
16. Plaintiff has never resided in, the judicial district where Defendants filed their complaint.
17. The basis for alleged debt referenced within Defendants' compliant did not originate inn Magisterial District 56-3-01.
18. Plaintiff never entered into or signed any contracts in the judicial district in which Defendant brought the legal action.
19. The complaint filed by Defendants alleged that Plaintiff owed a balance of \$7,353.97 to Midland.

20. Defendants' complaint alleged Plaintiff was indebted to Midland making Plaintiff a "consumer" pursuant to 15 U.S.C. § 1692a(3).
21. Defendants knew or should have known that Plaintiff did not reside in the judicial district in which the complaint was filed, and that Plaintiff did not enter into the alleged agreement within the judicial district.
22. Defendants' actions of filing a lawsuit against Plaintiff in a judicial district where Defendant did not reside and did not enter into the alleged contract violates numerous provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692d, 1692e(10), 1692f, and 1692i(a)(2) amongst others.
23. While attempting to collect the alleged debt from Plaintiff, Defendants acted in an abusive, harassing and deceptive manner contrary to the standards of civilized society and the standards employed by others in its industry.
24. The acts and omissions of Defendant Midland's agent, FFG who filed the civil complaint against Plaintiff, as described herein, were committed within the time and space limits of the agency relationship.
25. The acts and omissions by Defendant Midland's agent, FFG were incidental to or of the same general nature, as the responsibilities

Defendant Midland authorizes its agents to perform in collecting consumer debts.

26. In committing the acts and omissions described herein against Plaintiff, Defendant Midland's agent, FFG was motivated to benefit its principal, Midland
27. Defendant, Midland is therefore liable to Plaintiff through the Doctrine of Respondeat Superior for the intentional and negligent acts, errors and omissions of its agent FFG conducted in violation of state and federal law, including by not limited to violations of the FCPDA.
28. As a direct and proximate result of Defendants' illegal collection tactics and harassing behavior, Plaintiff has experienced stress and fear, as well as having incurred damages in the form of attorneys' as a result of Defendants intentional selection of an improper and inconvenient venue.

TRIAL BY JURY

29. Plaintiff is entitled to and hereby respectfully demands a trial by jury.
US Const. Amend. 7. Fed. R. Civ. Pro. 38.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES

ACT

15 U.S.C. §1692 et seq.

30. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
31. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including but not limited to each of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
32. As a result of each of Defendants' violations of the FDCPA, Plaintiff has suffered out-of-pocket expenses and actual damages, and is therefore entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against each and every Defendant for:

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES

ACT

15 U.S.C. §1692 et seq.

- For an order declaring that the Defendants' actions as described above are in violation of the FDCPA;
- for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against each and every Defendant;
- for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against each and every Defendant;
- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against each and every Defendant.

Respectfully submitted,

Dated: February 13, 2013

RAPA LAW OFFICE, P.C.

By: s/ Jason M. Rapa
Jason M. Rapa, Esquire
PA Attorney I.D. No. 89419
141 S. 1st Street
Lehigh, PA 18235
Telephone (610) 377-7730
jrapa@rapalegal.com
Attorney for Plaintiff

**VERIFICATION OF COMPLAINT
AND CERTIFICATION BY PLAINTIFF**

I, Sergio Cieri, depose and say as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
6. I have provided my attorneys with true and correct copies of each and every exhibit, which has been attached to this Complaint.
7. I have not altered, changed, modified, or fabricated the attached exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Date: 2/20/13

Sergio P Cieri
Sergio Cieri